* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : May 02, 2007
Date of Decision : May 10, 2007

\+ W.P. (C) 13741/2004 & CM Nos. 9602/2004, 6477/2005, 7738/2005, 76/2007 & 4354/2007

PUNJAB MIGRANTS WELFARE ASSOCI..... PETITIONER
Through : Mr. R.L. Punjwani, Advocate

versus

DELHI STATE GOVT. OF NCT OF DELHI .... RESPONDENT
Through: Mr. J.M. Sabharwal, Senior Advocate with Bankey Bihari and Mr. S.K. Sabharwal, Advocates for DDA
Mr. V.K. Tandon, Advocate for SDM
Ms. Worthing Kasar, Advocate for R-3

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

: Dr. S. Muralidhar, J.

1. The Punjab Migrants Welfare Association, Peera Garhi Relief Camp has filed this petition seeking a mandamus to the respondent Government of the National Capital Territory of Delhi ('GNCTD') to provide rehabilitation to the migrants from Punjab who had fled that state in the wake of the violence witnessed there in the years 1987-90, in terms of the Scheme framed and published by the Delhi Development Authority ('DDA').

2. The core issue concerns the eligibility of the individuals and

their families living in the Relief Camp at Peera Garhi to permanent housing in terms of the Scheme. This petition has been filed in a representative capacity on behalf of 397 persons stated to be residing at the Peera Garhi Relief Camp which is one of the 7 designated camps in Delhi. Upon arriving in Delhi, these individuals were asked to deposit the ration cards issued by the Punjab Government with the Deputy Commissioner, Delhi, for verification from the Punjab Government. The Deputy Commissioner would thereafter issue a certificate.

3. The Scheme of rehabilitation came to be framed consequent upon the orders passed by the Hon'ble Supreme Court in WP (C) 272-683/1990 (***Om Prakash vs. Union of India***) and WP (Crl) 855-1213/1990 (***Tek Chand vs. Union of India***). The order dated 12.7.1990 in ***Om Prakash*** records that the Union of India informed the Hon'ble Supreme Court that out of total of 413 claimants, the claim of 18 was not disputed and that the claim of the remaining 395 persons required to be re-examined on the basis of identity test indicated in that order. The test according to the Hon'ble Supreme Court was to be as follows:

> "The identity of the claimant has to be established on the basis of material considered reasonable by the concerned authority and the material for this purpose shall not be confined only to the production of a ration card. On the identity of the claimant being established the only other thing is to be seen is whether the claimant has been migrated from an area which falls within a disturbed area notified by the Government. If the claimant is found to have migrated from such area, his claim would be treated as genuine for this purpose."

4. The Hon'ble Supreme Court directed the genuineness of the claims to be certified by an Officer in the rank of Additional District Judge and left it open to persons whose claims were rejected to move to the Court.

5. By a subsequent order dated 12.9.1990, the Court was furnished with a list of 1050 persons. By this time, the Delhi Administration informed the Hon'ble Supreme Court that out of this list of 1050 persons, 470 were found to be genuine. Further, out of a further 7000 persons claiming to be migrants, 3391 had been found to be genuine. The counsel for the petitioners was directed to produce the 3669 rejected persons before the Additional District Judge for verification. The Court directed that if after inspecting the records, the counsel for the petitioner accepted the verification the rejection would be treated as final. If he did not, he could approach the Court for relief.

6. The issue of identifying the genuine migrants by a method that would be suitable and efficacious proved problematic and led to intervention by the Home Minister by his letter dated 18.6.1997. The Home Minister requested the Lt. Governor of the GNCTD to examine the cases of the Punjab migrants from a human angle and not purely from an administrative angle and recommended that they should be permitted to continue living in the relief camps till a more permanent solution was found.

7. The matter was also considered by the National Human Rights Commission ('NHRC'). In an order made by it on 18.6.1999, it recorded the fact that a meeting had been held in the office of the Secretary General of the NHRC on 15.3.1999 with the representatives

of the GNCTD, the petitioner as well as the Union of India. The NHRC then recommended the following measures:-

> "The Commission, therefore, recommends that the Government of NCT of Delhi should, under the guidance and with financial assistance from Government of India, work out a suitable rehabilitation plan by arranging Janta quarters to be determined keeping in view the current economic status of the refugee families. The Refugee camps will continue to be run at the current level, of essential services such as electricity, water supply and sanitary facilities until these families are permanently rehabilitated."

9. Following the above initiatives the DDA came up with a Housing Scheme for the 3661 Punjab migrant families/persons staying in 7 designated relief camps. Under this scheme, the allotments were to be of one room sets (a kitchen/kitchenette &toilet-cum bathroom) in Dwaraka, Narela and Rohini, on hire purchase basis. The eligibility condition stipulated was as under:-

> "**3. Eligibility**
> (i)"The applicant must be a person of one family who had migrated from Punjab and is staying in the designated 07 refugee camps. This should be certified by the Dy. Commissioner of the concerned District in which the camp of the applicant is situated."
> (ii)The applicant must be a citizen of India and should have competed 18 years of age as on 24-03-2000.
> (iii) The applicant must not own any residential flat or plot in full or in part on lease hold or free hold basis in the urban areas of New Delhi, Delhi and Delhi Cantonment, either in his/her own name or in the name of his/her wife/husband/minor dependent children.
> (iv)The applicant or his/her wife/husband/minor dependent children must not have been allotted a

house/plot by the DDA or any other land owning department in the NCT of Delhi."

The application fee was Rs. 10,000/- and the construction cost was indicated in the scheme.

10. At this stage, it is necessary to take note of a meeting which was held on 13.8.2002 in the chambers of the Hon'ble Lt. Governor which had been held with the representatives of the Municipal Corporation of Delhi ('MCD') and the DDA regarding the unauthorized occupation of the slum flats by those claiming to be victims of 1984 riots. The relevant portion of the minutes of that meeting, which took note of the pattern under which Punjab migrants were found eligible, reads as under:

"It was further decided on the pattern migrants families from Punjab be consider for the regularisation by the Slum and JJ wing of MCD on the payment of Rupees 1.8.lakhs provided they hold eligibility letters issued by the Office of Deputy Commissioner, Delhi who will do so after the concerned SDM certifies that the holder of the certificate (i.e. family) had handed over the original ration card of such and such district of Punjab on migration to Delhi on the date of issue of certificate. The name of families have been included after verifying/ checking/ seeing the photo identify card issued by election office family photograph issued for granting them pension which they hold too."

11. It is stated that the petitioners who are residing at the Peera Garhi Camp, apprehended that genuine migrants might get left out from the Scheme and, therefore, protested to the DDA. On 1.7.2004, a decision was taken in the office of the Principal Commissioner, DDA that the families living in the Peera Garhi Camp would be scrutinized

afresh by the SDM, Nangloi. However, it is stated that the SDM refused to abide by this decision and another meeting was held in the office of the Deputy Commissioner on 12.7.2004 when it was decided that 400-500 forms of application and affidavits would be supplied to the representatives of the families on 15.7.2004.

12. The Petitioners on 12.8.2004 filed this petition complaining of non-compliance by the Respondents with the orders of the Hon'ble Supreme Court and the recommendation made by the NHRC in its order dated 18.6.1999. They have sought writs by way of mandamus to the respondents in the terms as indicated in para 1 of this Order. They apprehended eviction of those petitioners living at the Peera Garhi Camp, whose application for allotment of permanent housing had been rejected.

13. By an order dated 17.8.2004, this Court stayed the eviction of the petitioners from the Peera Garhi camp. By a further order dated 25.5.2005, this Court directed that "eligible 261 persons and those who are found eligible shall complete formalities including the deposit of the initial amount of Rs. 10,000/- within eight weeks from today.

14. On 13.7.2005, this Court was informed by the DDA that out of 261 persons found eligible, 242 had collected the forms and 231 had deposited the forms and an amount of Rs.10,000/- each. On behalf of Delhi Administration, it was stated that the claims of over 137 persons were being examined.

15. Thereafter, on 27.7.2006, this Court passed the following order:-

> "I have heard Mr. Panjwani, learned counsel for the Petitioner. He has relied upon a list of 549 cases and

contended that all of them satisfy the conditions spelt out in the eligibility criteria indicated by the DDA for allotment.

As per submissions apparently an original list of 399 persons was furnished and subsequently an additional list of 380 was also lodged with the Respondents. Today, Mr. Tandon, appearing on behalf of the GNCT, submitted that out of the original list of 399 persons 328 have been recommended for the relief of alternative allotment. 61 were determined to be ineligible as they were unable to prove their claim or did not appear in its support, 5 claims were rejected and 5 persons did not turn out despite repeated reminders. Learned counsel also submitted that out of the additional 380 names 23 were to be determined ineligible.

After hearing the parties and with consent of counsel for the parties, it is agreed that as a last opportunity the SDM (Punjabi Bagh) would carry out the exercise of verification in order to enable such of the parties who may not have been ina position to come forward and establish their eligibility either out of the original list of 399 (extending to 61 names which had been determined as ineligible) and also out of the balance 357 persons from the list of 380 persons contained in additional list. it is agreed that the SDM would commence his sitting for the purpose of verification commencing from 21st August, 2006 between 3.00 P.M. to 4.00 P.M. The exercise shall be concluded by 5th September, 2006, if necessary the period may be extended appropriately. The Respondents shall also give adequate publicity in each of the refugee camps to facilitate persons interested in participating in the verification.

List on 11th October, 2006.

Order Dasti."

16. Pursuant to the above directions, this Court was informed on 11.10.2006 that in the inquiry conducted by the SDM, only 123 appeared before the authorities of whom, only 14 were found eligible. The report of the SDM was placed on record with an affidavit dated 2.2.2007. at the hearing on 23.2.2007, the counsel for the petitioner sought a copy of the report. The counsel for the petitioners was furnished with the copy of the report. In the report, it was stated that out of 549 petitioners, only 157 persons appeared and after examination of their claims, only 14 were found eligible. Thereafter, the counsel for the petitioner has filed one more application, CM No. 4354 of 2007 on 23.3.2007 seeking to challenge the rejection of the claims of one Arvind Sharma. Counsel for the petitioner also filed a further application claiming that 33 more persons claims should be considered.

17. It is the submission of Mr. Punjwani, learned counsel for the petitioner that the basis of determining eligibility as laid down by the Hon'ble Supreme Court has been either modified to the disadvantage of the Punjab migrants or given a go by. He submits that the eligibility criteria stipulated in the Scheme of the DDA is beyond what was directed by the Hon'ble Supreme Court, in as much as the Punjab migrants were required under the Scheme to not only furnish the Deputy Commissioner's Certificate to establish their identity but also show that they were residents of the Peera Garhi Camp. He pointed out that the Deputy Commissioner could have issued a certificate only upon surrender of the ration card and that the submission of a voter identity card should serve the purpose of proving residence at the camp. He further submitted that no survey was conducted of those

living in the Peera Garhi camps and it must be concluded in the circumstances that whoever was living in the Peera Garhi camp should be an eligible Punjab migrant. He makes a grievance that the order dated 27.7.2006 passed by this Court has not been complied with.

18. In reply, Mr. J.M. Sabharwal, learned Senior counsel for the respondent points out that verification process has been meticulously undertaken several times over and every effort has been made to not leave out any genuine migrant. He further submits that the eligibility criteria has been evolved on a rational basis to ensure that only a genuine Punjab migrant is extended the benefit. According to him, the criteria evolved is not inconsistent with what has been indicated in the orders of the Hon'ble Supreme Court. Mr. V.K. Tandon, learned counsel for the GNCTD submits that it was only after several opportunities, the list of eligible persons was prepared. He submits that every effort has been made to ensure that no one who is eligible has been left out. He submits that the exercise of verification has to conclude at some stage.

19. On a perusal of the orders passed by the Hon'ble Supreme Court, this Court is not prepared to accept the submission that the eligibility criteria had been fixed by the Hon'ble Supreme Court itself and could not be verified or modified by DDA. Such an inference is not possible to be drawn from the orders of the Hon'ble Supreme Court. The requirement of production of a ration card in addition to the Deputy Commissioner's Certificate for establishing identity cannot be termed as arbitrary or unreasonable as some foolproof method has to be devised to ensure that only the genuine migrants get a permanent accommodation. The criterion, indicated in the minutes of the

meeting of the Lt. Governor, that an election identity card can be produced instead of ration card appears to have been suggested for the 1984 riot victims. It cannot be said that the non extension of that criteria to the Punjab migrants is arbitrary or unreasonable. It is not as if all claims made by the Peera Garhi Camp residents have been rejected. Ultimately some uniform criteria will have to be applied, else that itself may render the process arbitrary.

20. As regards the verification conducted by the SDM, the status report states as follows:

> "To mark the presence of the petitioner appearing before the team, a register was also maintained and during the course the available days and time, some 123 petitioners appeared before the team and filed their respective papers in order to prove their eligibility under the Housing Scheme for the Punjab Migrants. As is evident from the perusal of attendance register during the period beginning from 21.08.2006 to 31.08.2006, only 55 petitioners appeared meaning thereby that on an average only five petitioners put their appearance. It is only during the last two days i.e. from 04.09.2006 to 05.09.2006 a large number of 54 petitioners came up to submit their claims before the team. So much so even after the closure of the hearing on 5th September 2006 who so ever came to file his name was allowed to do so and no one was denied opportunity of being heard. After the closure of the regular hearing process 34 more petitioners filed their claims before the team."

21. The status report noted that the list of the persons at the Peera Garhi Camp was prepared after detailed physical survey and it was this list that was submitted to the NHRC. It was further stated as under:

> “In the background of the relief list as outlined above, the claim of all the 157 petitioners who appeared before the Sub-Divisional Magistrate (Punjabi Bagh) have been examined and only 14 names have been found forming part of the relief list. And out of these petitioners 3 names have already been considered favourably in the past and rest 11 names are being examined with reference to the documents filed by them. However, the remaining 143 petitioners who appeared in the office of the Sub-Divisional Magistrate (Punjabi Bagh) do not form part of the any of the approved relief list as such they are ineligible for being recommended for relocation under the Housing Scheme for the Punjab Migrants. Their claims are therefore, liable to be dismissed.
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> Further, it is brought to the notice of the Hon'ble High Court that Peera Garhi Camp is presently occupied by roughly 1500 families and out of this figure more than 1000 families are unauthorisedly occupying the space and have been illegally using the water and electricity of the Government. The Government of Delhi is on an average spending nearly 25 lakhs rupees per month in providing free electricity and water to the inmates of these camps. Since the claims of the all petitioners in their entirety have been examined and this office is committed to send recommendation letters to all the eligible migrants so examined by the 31st October' 2006.”

22. This Court finds that the exercise undertaken by the SDM to verify the claims of the residents of the Peera Garhi Camp cannot be termed arbitrary or unreasonable. It appears that despite several opportunities many of the petitioners in fact did not turn up before the SDM for verification. What should be the document to be relied upon in order to ascertain that the claimant is a resident of the relief camp at Peera Garhi is for the respondent to decide. If the name of the

claimant does not figure in the lists prepared earlier on the basis of physical survey, producing an election identity card for a subsequent period may not help. The same can also be said of the other documents like a letter received at the camp or a ration card issued. A subsequent occupant of the relief camp cannot be automatically termed as a Punjab migrant.

23. On an overall assessment, this Court is of the view that the decision of the SDM as reflected in the status report does not suffer from the vice of arbitrariness or irrationality. Accordingly, the prayer of the petitioners that a further verification should be ordered cannot be acceded to. This Court is unable to take upon itself the task of devising any further eligibility criteria in place of that which has been uniformly applied across the board. The applications seeking to include more claimants also cannot be entertained at this stage. The residents of the Peera Garhi Camp have been living in there for several years, now. Some of their claims for permanent accommodation have been accepted and others rejected. While the successful claimants will move in to the flats allotted to them subject to their fulfilling all other conditions, the rest will have to move out with this Court upholding the rejection of their claims by the SDM. The camps were not intended to and cannot possibly continue indefinitely. This however does not preclude the Government of NCT of Delhi from sympathetically considering the plea of the rejected claimants for alternative allotment. That will not in any event create any vested right in such claimants to remain in the camp.

24. In the considered view of this Court, the claimants whose claims have been rejected should be given some reasonable time before being asked to leave the Peera Garhi camp. This is to enable them to

make alternative arrangements. Accordingly, it is directed that the petitioners whose claims for a permanent accommodation stand rejected should be permitted to continue in the Peera Garhi camp till 31.8.2007. This will not come in the way of the GNCTD on its own extending the time for their vacating the camp.

25. With the above directions, the writ petition is disposed of. The applications are also disposed of.

S. MURALIDHAR, J.

May 10, 2007
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